D.B.CIVIL SPECIAL APPEAL (W) NO. 833/2007
Smt. Rekha Jain
v.
State of Rajasthan & ors.

Date of order : 31.05.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri I.J.Singh for the appellant

This special appeal arises from S.B.Civil Writ Petition no. 6774/2006 which the appellant had preferred challenging the order dated 18.8.2006 by which pursuant to the order of the Rajasthan Civil Services Appellate Tribunal dated 6.12.2005 the State Government cancelled the transfer of Smt. Kusum Upadhyaya and as a consequence thereof, posted the appellant back to Gunta dispensary from Mubarikpur. Earlier by order dated 7.11.2005 the appellant then posted at Gunta in the district of Alwar was posted at Mubarikpur in the same district in place of Smt. Kusum Upadhayaya. Smt. Kusum Upadhyaya challenged the order in Appeal no. 1413/2005 before the Tribunal. While issuing notice to the respondents including the appellant herein, the Tribunal directed that the appellant, meaning thereby Kusum Upadhyaya may not be relieved from her post till further orders. The State instead of contesting the matter and seeking vacation of the interim order cancelled the earlier order dated 7.11.2005 itself on 18.8.2006. It is stated that after the order dated 7.11.2005 stood cancelled the appeal preferred by Kusum Upadhyaya was dismissed by the Tribunal as having become infructuous. The writ petition of the appellant was disposed of along with bunch of writ petitions by a common order with certain directions. The direction applicable to the case of the appellant runs as under :

> “Where the transfer order has been withdrawn because of its challenge before the Court/Tribunal and fresh order of

> transfer has been passed despite the lis pending before the Court/Tribunal, the respondents shall withdraw the subsequent order and contest the cause in the court of law."

We are in complete agreement with the approach of the learned Single Judge. We do not wish to go into the propriety of the order dated 18.8.2006 cancelling the earlier order dated 7.11.2005. However we are not able to appreciate as to how without contesting the matter before the Tribunal the State Government cancelled the very order rendering the appellant remedyless. The appeal having been dismissed as being infructuous the appellant could not get opportunity to contest the matter. It is to be kept in mind that the order dated 6.12.2005 was an interim order by which notice had been issued to the parties and the appellant was entitled to opportunity of hearing before passing the impugned order. We are of the view that in terms of the direction of the learned Single Judge proceedings in Appeal no. 1413/2005 would stand revived. On such revival, it goes without saying, the appellant will get opportunity of contesting the matter.

With these observations the appeal stands disposed of.

The order dated 18.8.2006 in the circumstances will be treated as an interim order subject to decision of the Tribunal. The Tribunal will make all endeavours for disposal of the appeal as early as possible, preferably within two months after service of notice to the appellant i.e. Smt. Kusum Upadhyaya.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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